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HEARING PROCEDURE

PROPOSED AMENDED CLEANUP AND ABATEMENT ORDER FOR RIALTO-AREA PERCHLORATE CONTAMINATION

Persons wishing to participate in the hearing on the proposed Cleanup and Abatement Order (CAO) for the Rialto-Area Perchlorate Contamination should read the following procedure carefully. The hearing procedure contains detailed requirements, many of which require action in advance of the hearing dates. Failure to adhere to the hearing procedure may affect your ability to participate in the hearing.

TYPES OF HEARING PARTICIPANTS

Participants at the hearing consist of several entities:

Hearing Officer

The Hearing Officer, Walter Pettit, will preside over the proceedings on the CAO. Mr. Pettit is fully empowered to adjudicate the CAO, make all procedural determinations concerning the conduct of the proceedings, and render a decision to issue the CAO. Mr. Pettit's actions are treated, for the purposes of appeal, as actions of a Regional Water Quality Control Board Executive Officer subject to review by the State Water Resources Control Board.

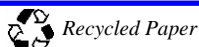
Advisory Staff

The Advisory Staff consists of staff members and counsel: Erik Spiess, Senior Staff Counsel. The Advisory Staff is not a "designated party" and the statements of its members do not constitute "evidence." The purpose of the Advisory Staff is to assist the Hearing Officer in considering the evidence and argument received and in reaching a decision on the CAO.

Designated Parties

Parties to the hearing may present evidentiary testimony, and are subject to cross-examination. Parties may also cross-examine other parties' witnesses. Because of the complexity of their participation, parties receive more time to address the Hearing Officer and cross-examine witnesses.

California Environmental Protection Agency



The following participants are designated as parties for hearings proceedings on the CAO:

The following participants are preliminarily designated as parties for this matter:

1. Advocacy Staff
2. Goodrich Corporation
3. Pyro Spectaculars, Inc.
4. Emhart Entities (Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc., and Black & Decker [U.S.] Inc.)
5. City of Rialto
6. County of San Bernardino

Interested Persons

All others besides the above-listed designated parties are considered “interested persons.” Interested persons may present non-evidentiary policy statements that will be heard first, prior to the presentation of evidence by the parties. Interested persons are not entitled to present evidence. Interested persons are not subject to cross-examination and may not cross-examine other parties.

DESIGNATED PARTIES

Direct Testimony, Evidence and Argument

Designated parties are required to have previously submitted all comments (testimony, evidence, and argument) in writing by the deadline in the Notice of Public Hearing.

Presentations at the hearing(s), made either orally or in visual aids, may summarize or explain written comments received by that deadline or late written comments accepted by the Hearing Officer, but shall not add new comments.

To avoid hearsay objections, each party should arrange for any witness who has submitted written testimony to be present at the hearing so they may testify in person and/or affirm their testimony under oath. (California Code of Regulations, Title 23, Section 648.4(d).) If a person who has submitted written testimony is not present at the hearing, their written testimony may constitute hearsay evidence. Government Code section 11513 provides that hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible in a civil action notwithstanding the objection. A hearsay objection is timely if made before the close of the hearing.



Rebuttal

Rebuttal is a limited opportunity for parties other than the Advocacy Staff to present testimony, evidence and argument not previously submitted in writing. Rebuttal is only available to respond to new testimony, evidence, or argument not previously available during or before the review period ending **February 14, 2007**. The materials open to rebuttal include (1) written materials submitted by other designated parties or interested persons during the review period of **January 29, 2007, to February 14, 2007**, and (2) new testimony, evidence, or argument circulated by the Advocacy Staff that was not available during the review period of **January 29, 2007, to February 14, 2007**. **Rebuttal is not an opportunity to present new testimony/evidence/argument.** The Hearing Officer has the discretion to strike any rebuttal testimony, evidence or argument that does not comply with this requirement, including materials that could have been submitted as direct testimony/evidence/argument and “rebuttal” materials that do not respond to previously submitted testimony/evidence/argument.

Rebuttal does not have to be submitted in writing. Any written rebuttal material (including evidence, testimony or argument that a designated party wishes to present in writing) must be submitted in a handout using the visual aid procedures in the Notice of Public Hearing.

Redirect and Recross

Each designated party may, at the proper time, request permission to conduct redirect or recross examination of a witness(es). The scope of such examination will be strictly limited to new issues raised during cross-examination or redirect respectively. Redirect and recross will be allowed only at the discretion of the Hearing Officer.

Visual Aids

Designated parties wishing to use visual aids (e.g., handouts, computer presentations) at the hearing must have submitted them in advance according to with the applicable procedures in the Notice of Public Hearing. **Visual aids may be used only to present or summarize information previously submitted in written comments or already in the record—not to introduce new evidence or argument.** Objections to visual aids on the grounds that the submitting party did not adhere to the Notice of Public Hearing or that they improperly raise new issues in violation of the restrictions on rebuttal will be timely only if raised at the beginning of the hearing as specified below.



Witnesses and Objections

A designated party may present direct testimony from only those witnesses properly disclosed on that party's witness list. Witnesses who will provide only rebuttal testimony need not be disclosed on the witness list.

INTERESTED PERSONS

Oral Presentations

Interested persons may present a short, non-evidentiary policy statement that will be heard first, prior to the presentations by the designated parties. A policy statement may include (1) the policy views and position of the speaker, (2) non-expert analysis of evidence that already has been presented, or (3) argument concerning the CAO or associated materials.

Each interested person will receive a maximum of **3 minutes** to make a policy statement, but that time may be significantly reduced by the Hearing Officer depending on the total number of persons wishing to speak or to avoid redundancy. **Speakers are therefore requested to avoid repeating comments of prior speakers.**

At the discretion of the Hearing Officer, a party may ask a question(s) of an interested person for the purpose of clarifying their statements. However, an interested person shall not be subject to cross-examination and may not cross-examine hearing witnesses or interested persons.

Interested persons are requested to submit a speaker card in advance of the commencement of the hearing. **No speaker cards will be accepted after the Hearing Officer opens the hearing.**

Visual Aids

Interested persons may use handouts as a part of their presentations, but must adhere to the procedures outlined in the Notice of Public Hearing. **Visual aids may be used only to present or summarize information previously submitted in written comments or already in the record—not to introduce new comments.**

CONDUCT OF HEARING

At the beginning of the hearing, the Hearing Officer will hear objections (if any) by designated parties to visual aids.

Following the resolution of those objections, interested persons will have the opportunity to present policy statements.

Designated parties may (in accordance with the Order of Proceedings) present opening statements, summarize previous written submittals via non-witnesses or direct testimony from witnesses, present rebuttal testimony/argument, cross-examine witnesses, present redirect and recross at the discretion of the Hearing Officer, and present closing statements. The below list indicates the time allotment for each party's participation at the hearing:

- | | |
|-----------------------------|-----|
| 1. Advocacy Staff | TBD |
| 2. Goodrich | TBD |
| 3. Emhart Entities | TBD |
| 4. Pyro Spectaculars | TBD |
| 5. City of Rialto | TBD |
| 6. County of San Bernardino | TBD |

Each party may allocate its time for its opening statement, direct and rebuttal testimony, cross-examination, authorized redirect and recross, and closing in any way it desires.

The Hearing Officer and members of the Advisory Staff may ask questions at any time. Time spent by a party answering these questions will not count against the party's total allocation.

All witnesses who testify at the hearing, or who are present and have submitted written testimony, may be cross-examined by other designated parties. Cross-examination is not limited to matters covered in direct testimony or written submissions.

Each designated party's representatives will have an opportunity to present a summary of that party's direct and rebuttal testimony/argument. The summary need not be presented by a witness.

After each designated party completes its summary of testimony and argument, each of that party's witnesses will be subject to cross-examination by all other designated parties.

Following cross-examination by all other designated parties, each party may request the opportunity to conduct redirect examination of its witnesses. The scope of redirect will be strictly limited to new issues raised during cross-examination. Redirect will be allowed only at the discretion of the Hearing Officer.

Following any permitted redirect of a witness, all other designated parties may request the opportunity to recross-examine the witness. The scope of recross will be strictly

limited to new issues raised during redirect. Recross will be allowed only at the discretion of the Hearing Officer.

Each designated party will have an opportunity to present a closing statement.

The Hearing Officer may rule inadmissible or out-of-order testimony and cross-examination that is irrelevant, repetitive, or disruptive of the orderly conduct of the hearing.

At the end of the last closing statement, the Hearing Officer will either render a decision on the proposed CAO or take the matter under submission.

ORDER OF PROCEEDINGS

The following order of proceedings governs the evidentiary hearing before the Hearing Officer. The purpose of this hearing is for the Hearing Officer to hear policy statements from interested persons and to hear the parties summarize their previously submitted written evidence, to present rebuttal, and to cross-examine other parties' witnesses. At the conclusion of the hearing, the Hearing Officer may consider adoption of the CAO or may take the matter under submission.

1. Open Hearing
2. Opportunity for Parties to Present Objections to Visual Aids
3. Policy Statements by Interested Persons
4. **Advocacy Staff Opening**
5. Goodrich Cross-Examination
6. Pyro Spectaculars Cross-Examination
7. Emhart Entities' Cross-Examination
8. City of Rialto Cross-Examination
9. County of San Bernardino Cross-Examination
10. **Goodrich Opening/Rebuttal**
11. Advocacy Staff Cross-Examination
12. Pyro Spectaculars Cross-Examination
13. Emhart Entities Cross-Examination
14. City of Rialto Cross-Examination
15. County of San Bernardino Cross-Examination
16. **Pyro Spectaculars Opening/Rebuttal**
17. Advocacy Staff Cross-Examination
18. Goodrich Cross-Examination
19. Emhart Entities Cross-Examination
20. City of Rialto Cross-Examination
21. County of San Bernardino Cross-Examination
22. **Emhart Entities Opening/Rebuttal**



23. Advocacy Staff Cross-Examination
24. Goodrich Cross-Examination
25. Pyro Spectaculars Cross-Examination
26. City of Rialto Cross-Examination
27. County of San Bernardino Cross-Examination
28. **City of Rialto Opening/Rebuttal**
29. Advocacy Staff Cross-Examination
30. Goodrich Cross-Examination
31. Emhart Entities' Cross-Examination
32. Pyro Spectaculars Cross-Examination
33. County of San Bernardino Cross-Examination
34. **County of San Bernardino Opening/Rebuttal**
35. Advocacy Staff Cross-Examination
36. Goodrich Cross-Examination
37. Emhart Entities Cross-Examination
38. Pyro Spectaculars Cross-Examination
39. City of Rialto Cross-Examination
40. City of Rialto Closing
41. County of San Bernardino Closing
42. Pyro Spectaculars Closing
43. Emhart Entities Closing
44. Goodrich Closing
45. Advocacy Staff Closing
46. Hearing Officer/Advisory Staff Questions, Close of Public Hearing, Adjournment

Walter Pettit
Hearing Officer

Draft – January 10, 2007

File: CAO Hearing Procedure-Final Draft.doc

